

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Relay Services)	
And Speech-to-Speech Services for)	CC Docket No. 98-67
Individuals with Hearing and Speech)	
Disabilities, and the Americans with)	
Disabilities Act of 1990)	
)	
NECA Interstate Telecommunications)	
Relay Services Fund Payment Formula)	
and Fund Size Estimate for July 2005)	
Through June 2006)	

COMMENTS OF HAMILTON RELAY, INC.

Hamilton Relay, Inc. ("Hamilton"), by its counsel and pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, hereby comments on the payment formula and fund size estimate for the 2005-2006 Interstate Telecommunications Relay Services ("TRS") Fund, which was submitted by the TRS Fund Administrator on April 25, 2005.¹

Hamilton is a provider of traditional relay services and speech-to-speech service ("STS") in nine states and the District of Columbia. In addition, Hamilton is a nationwide provider of Internet Relay and Video Relay Services ("VRS").

¹ See *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Payment Formula and Fund Size Estimate Interstate Telecommunications Relay Services (TRS) Fund for July 2005 through June 2006 (filed Apr. 25, 2005) ("NECA Proposal"); see also *National Exchange Carrier Association (NECA) Submits the Payment Formula and Fund Size Estimate for Interstate Telecommunications Relay Services (TRS) Fund for July 2005 through June 2006*, Public Notice, CC Docket No. 98-67, DA 05-1175 (rel. April 28, 2005).

I. TRS Rates Based on “Rate of Return” Calculations Ultimately Harm Consumers.

As an initial matter, Hamilton reiterates its opposition to the Commission’s mandate that the TRS Fund Administrator use a “rate of return” methodology to calculate TRS rates. Allowances for an 11.25% return on capital investment and a 1.4% allowance for cash working capital may make sense when regulating a single monopoly carrier, but they make little sense when regulating numerous, highly competitive providers such as TRS providers. Rate of return rates typically are artificially high and thus harmful to the consumers who contribute to the Interstate TRS fund.

Other, better forms of TRS rate calculation are available. For example, Hamilton has proposed its MARS Plan, which calculates a TRS and Internet Relay rate based on the average of competitively-bid intrastate TRS rates across the country.² While Hamilton encourages the adoption of the MARS Plan rate, any rate which is grounded in competition inevitably will be more beneficial to consumers than an artificially generated rate of return on investment. Hamilton therefore urges the Commission to solicit public comment on the MARS Plan when it issues a decision on the TRS Fund Administrator’s proposal for 2005-2006 rates. To the extent possible, consumers who pay for the Interstate TRS Fund should be

² See Hamilton Petition for Reconsideration, CC Docket No. 98-67, CG Docket No. 03-123 (filed Oct. 1, 2004). STS and Spanish relay would also be covered under the MARS Plan.

permitted to benefit from competitively-based TRS rates by the time that the TRS Fund Administrator proposes TRS rates for 2006-2007.

As an additional benefit, Hamilton submits that the adoption of the MARS Plan will lead to a far more streamlined and less administratively burdensome rate-setting process for the TRS Fund Administrator, the Commission and relay providers alike. Currently, the TRS Fund Administrator begins to collect data for the following year's rate approximately nine months before it submits its proposal to the Commission. Under the MARS Plan, the ratemaking process could likely be finalized in a matter of weeks if not days. Thus, not only is the rate of return methodology fundamentally flawed when applied to a competitive market, it is also administratively burdensome. For all of these reasons, Hamilton urges the Commission to reconsider its reliance on rate of return.

II. Other Issues.

The TRS Fund Administrator has generally proposed decreasing the per-minute compensation levels for relay services. Nonetheless, the TRS Fund Administrator has proposed an increase in the carrier contribution factor in light of two factors: 1) continued decline in the interstate revenue base used to fund the TRS program; and 2) a significant increase in demand for Internet Relay and VRS. Hamilton agrees with the TRS Fund Administrator that these factors merit an increase in the overall size of the fund in order to meet the increasing demand for relay services, particularly Internet Relay and VRS.

Hamilton also wishes to clarify for the record that it continues to support a combined traditional interstate TRS and Internet Relay rate. At the April 19, 2005 meeting of the Interstate TRS Fund Advisory Council, Hamilton's representative voted in favor of separating the per minute rate for Internet Relay from the per minute rate for traditional TRS. In doing so, Hamilton's decision was based on the representation that separating the rates in this manner would save the Interstate TRS Fund approximately \$2.5 million per year. Since that time, however, the TRS Fund Administrator has revised its projections and determined that separating Internet Relay and traditional TRS rates would actually cost the Interstate TRS Fund approximately \$12,000.³ In addition, Hamilton has closely re-analyzed its own cost data, and determined that its costs for providing Internet Relay and traditional TRS are substantially similar.⁴ In light of new findings that there are no cost savings to be gained from separating the rates, and because Hamilton's own cost data show that Internet Relay and traditional TRS costs are similar, Hamilton has returned to its original position of supporting the continued combination of Internet Relay and traditional interstate TRS rates. Absent any material savings to the TRS Fund, it is administratively expedient to combine the rates for similar cost services.

With respect to the VRS rate, Hamilton agrees with the TRS Fund Administrator that two important VRS issues – speed of answer and

³ See NECA Proposal at 21 n.40.

⁴ Hamilton would be happy to submit its calculations to Commission staff on a confidential basis.

interoperability — remain unresolved and will significantly affect VRS costs, and thus rates. Hamilton urges the Commission to revisit the VRS rate for 2005-2006 once it has resolved the average speed of answer and interoperability issues.⁵

III. Conclusion.

For the foregoing reasons, Hamilton urges the Commission to initiate a proceeding to consider alternatives to the rate of return regime, specifically Hamilton's MARS Plan. Hamilton also supports combining Internet Relay rates and traditional TRS rates, and urges the Commission to revisit the VRS rate once a decision is reached on interoperability and speed of answer requirements.

Respectfully submitted,

HAMILTON RELAY, INC.

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⁵ See NECA Proposal at 21.